



Office of the Attorney General

State of Texas

April 19, 1993

DAN MORALES

ATTORNEY GENERAL

Janice M. Caldwell, Ph.D.
Executive Director
Texas Department of Protective
and Regulatory Services
P.O. Box 149030
Austin, Texas 78714-9030

OR93-190

Dear Dr. Caldwell:

Your predecessor asks whether certain information is subject to required public disclosure under the Texas Open Records Act, V.T.C.S. article 6252-17a. Your predecessor's request was assigned ID# 17628.

The Texas Department of Human Services received a request from an attorney representing the parents of a child for records of "an administrative hearing regarding findings of abuse and neglect in a child care facility." The Department of Protective and Regulatory Services (the "department"), a new state agency separate from the Department of Human Services, is now responsible for investigations of child abuse and neglect. We understand that the requested records, although created by the Department of Human Services during its investigation of the charges, are now in the custody of the department. Accordingly, the Texas Department of Protective and Regulatory Services is making this request for an open records decision. Your predecessor believes that the records are confidential under section 34.08 of the Family Code pursuant to section 3(a)(1) of the Open Records Act.

The department did not make its request for an attorney general decision within the ten-day deadline as section 7(a) of the Open Records Act requires. When a governmental body fails to meet the ten-day deadline, the information is presumed public absent a compelling reason for withholding the information. Open Records Decision No. 150 (1977). The exception from public disclosure in question here, confidentiality under another source of law, is a compelling reason for withholding the information. *Id.*

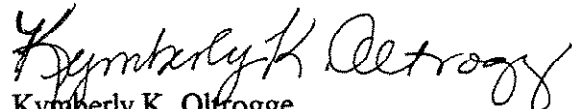
Section 3(a)(1) excepts "information deemed confidential by law, either Constitutional, statutory, or by judicial decision." Section 34.08(a) of the Family Code provides in part that

the reports, records, and working papers used or developed in an investigation made under this chapter are confidential and *may be disclosed only for purposes consistent with the purposes of this code under regulations adopted by the investigating agency.* [Emphasis added.]

Neither the Department of Human Services nor the department has, at this time, enacted regulations providing limited disclosure as section 34.08(a) of the Family Code authorizes. Moreover, Open Records Decision No. 587 (1991) concluded that section 34.08 of the Family Code makes confidential records of child abuse investigations that the Department of Human Services has carried out and that no special right of access, such as that provided in section 3B of the Open Records Act, applies to information found to be confidential under section 34.08. Thus, section 3(a)(1) of the Open Records Act, incorporating section 34.08 of the Family Code, excepts the records in question from disclosure.

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please refer to OR93-190.

Yours very truly,



Kimberly K. Oltrogge
Assistant Attorney General
Opinion Committee

KKO/LBC/le

Ref: ID# 17628

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